

REMARKS

In the above-identified Office Action, the Examiner has rejected claims 1-3, 5-6, 13-14, 17-18 and 20 and 22 under 35 U.S.C. §103(a) as unpatentable over Nicholas in view of Sheiness et al. The Examiner has stated that it would have been obvious to use the method taught by Nicholas with a step of using hybridisation probe and lysis buffers taught by Sheiness for the purpose of developing a sensitive method of detection of bacteria in the sample. Applicant disagrees with the Examiner's conclusion in this regard, noting that neither Nicholas nor Sheiness is concerned with *in situ* hybridisation. Nicholas performs Gram-Staining. Sheiness is concerned with complete lysis of bacteria such that they release nucleic acid (summary of the invention in column 6).

The present invention is concerned with *in situ* hybridization (*see* claim 1 step b). For *in situ* hybridization it is essential that nucleic acid stays associated with the bacterial cell, since otherwise information on the bacterium morphology is lost. This is in sharp contrast with Sheiness, in which release of nucleic acid from the bacterial cell is achieved and thus destruction of the link between the organism and the nucleic acid. The lysis conditions referred to in Sheiness are thus different from the lysis condition in the present invention. The lysis conditions in Sheiness are also used for a different purpose than the conditions in the present invention.

The present claims further underline this technical difference. It is therefore respectfully submitted that Nicholas and Sheiness cannot be combined to arrive at *in situ* hybridisation, as neither reference is concerned with this process. Combining Nicholas with Sheiness results in the release of the bacterial nucleic acid. The combination therefore does not combine into *in situ* hybridisation as the correlation of signal in the hybridisation with bacterial morphology is not possible. Moreover, Sheiness does not disclose the lysis buffers of the present invention.

It is therefore respectfully requested that the Examiner reconsider the rejection.

Applicant has also added new claim 23 which was a combination of claim 1 and claims 5-7, new claim 24 which is a combination of claims 1 and 13-15, new claim 25 which is a combination of claims 1, 17 and 19, and new claim 26 which is a combination of claims 1, 20 and 21.

Applicant believes that these claims are allowable insofar as they incorporate the limitations indicated as allowable by the Examiner in the above-identified Office Action.

Applicant hereby requests reconsideration and reexamination thereof.

With the above amendments and remarks, this application is considered ready for allowance and Applicant earnestly solicits an early notice of same. Should the Examiner be of the opinion that a telephone conference would expedite prosecution of the subject application, he is respectfully requested to call the undersigned at the below-listed number.

Respectfully submitted,
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